IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16894 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

MAHALAXMIBEN KANTILAL JARIWALA - Petitioner(s)

Versus

GHANSHYAM CO-OP HOSG. SOCIETY & 1 - Respondent(s)

==========

Appearance :

MS KJ BRAHMBHATT for Petitioner(s) : 1,MS VARSHA BRAHMBHATT for Petitioner(s) : 1,
MR SHIRISH JOSHI for Respondent(s) : 1 - 2.

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 10/07/2006

ORAL JUDGMENT

1. The petitioner is running a pre-primary school in the Bungalow situated in respondent no.1-Cooperative Housing Society. The society is opposing to the school rickshaws entering the

society for dropping and picking up the children. The petitioner therefore, approached the Board of Nominees by filing Lavad Suit and also prayed for interim injunction. The same was granted by the Lavad Court by an order dated 13-1-2004. Exh.5 application was therefore, allowed. Effectively, it was provided that society shall not prevent the school rickshaws to enter through gate no.1 for dropping and picking up the children. The society therefore, preferred a revision application before the Cooperative Tribunal. The Cooperative Tribunal partially allowed the application by impugned order dated 29-10-2004. It was provided in partial modification of the order passed by the Lavad Court that Gate No.1 shall not be closed by the society. However, vehicles carrying students shall not be allowed to enter the gate and vehicles should be parked outside the society.

2. It is not in much dispute that gate is situated at a distance of about 100 ft. to 200 ft. from

the school. The entire dispute is pending before the Lavad Court. If the Tribunal has therefore, during the pendency of the main proceedings found it appropriate to provide for modification to safeguard interest of the members of the society also, in exercise of powers under Article 227 of the Constitution of India, I do not find it appropriate to interfere.

3. Two observations need to be made however. The Board of Nominees shall dispose of the pending suit unmindful of observations made by the Tribunal or any observations that may have been made by this Court in this order. Secondly, considering the ongoing monsoon season, the order passed by the Tribunal shall take effect only from 15th September, 2006.

4. Subject to above observations and directions, the petition is rejected. Rule is discharged with no order as to costs.

(Akil Kureshi,J.)

(raghu)